

APPEAL NO. 162624
FILED FEBRUARY 15, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 16, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on December 28, 2015, and that the claimant's impairment rating (IR) is 26%.

The appellant (carrier) appealed, disputing the hearing officer's determinations of MMI and IR. The carrier argues that the evidence shows the claimant had not received adequate medical treatment to address his injuries by the date the designated doctor opined the claimant reached MMI. Additionally, the carrier argues that the designated doctor improperly calculated the IR. The claimant responded, urging affirmance of the disputed MMI and IR determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury and that (Dr. E) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor to determine MMI and IR. The claimant testified that he was injured when a heavy oil field hose he was carrying snapped back causing him to fall and injure his right wrist.

MMI

The hearing officer's determination that the claimant reached MMI on December 28, 2015, is supported by sufficient evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the

injured employee's condition as of the MMI date considering the medical record and the certifying examination.

Dr. E examined the claimant on January 30, 2016, and certified that the claimant reached MMI on December 28, 2015, with a 26% IR, using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). In her narrative report, Dr. E assigned 19% upper extremity impairment for the right wrist range of motion (ROM) loss; 23% upper extremity impairment for the right median nerve sensory deficit; 3% upper extremity impairment for the right median nerve motor deficit; and 12% upper extremity impairment under Table 27 on page 3/61 of the AMA Guides for the claimant's resection arthroplasty (proximal carpal row). Using the combined values chart, Dr. E combined 25% sensory/motor deficit with 19% ROM loss and 12% for the claimant's arthroplasty to obtain a total upper extremity IR of 46% which, Dr. E found, converts to a 26% whole person IR.

Dr. E's assignment of a 26% whole person IR in this case was in error. Table 3 on page 3/20 of the AMA Guides provides that a 46% upper extremity impairment equals a 28% impairment of the whole person rather than 26% as determined by Dr. E.

The Appeals Panel has previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. See Appeals Panel Decision (APD) 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. Under the facts of this case, the certifying doctor's assigned IR can be mathematically corrected based upon the right upper extremity impairment figures documented in her narrative report.

The hearing officer found that the preponderance of the other medical evidence is not contrary to Dr. E's assigned IR, and after a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 26% and render a decision that the claimant's IR is 28% as mathematically corrected.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process isⁱ

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge

ⁱ We note that the hearing officer's decision recites an incorrect name and address of the registered agent for service. The insurance carrier information sheet in evidence contains the name and address listed above.